

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

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| Illinois Commerce Commission | : | |
| On Its Own Motion | : | Docket No. 11-0711 |
| | : | |
| Development and adoption of rules | : | |
| concerning rate case expense. | : | |

Reply Brief on Exceptions

MidAmerican Energy Company

Prepared by:

Jennifer S. Moore, Attorney
MidAmerican Energy Company
106 East Second Street
P. O. Box 4350
Davenport, Iowa 52808

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MIDAMERICAN’S REPLY BRIEF ON EXCEPTIONS

Now Comes, MidAmerican Energy Company (MidAmerican), and hereby submits its Reply Brief on Exceptions in accordance with the Administrative Law Judge’s (ALJ) May 8, 2013, Notice of ALJ’s Ruling and Section 200.830 of the Rules of Practice of the Illinois Commerce Commission (Commission), 83 Ill. Adm. Code § 200.830.

I. INTRODUCTION

Several parties have filed exceptions in this case which are similar to those proposed by MidAmerican. Most notably, all parties took exception to the Proposed Order’s conclusion that the Appellate Court in in *People ex rel. Lisa Madigan v. Ill. Commerce Comm.*, 2011 IL App. (1st) 101776, 964 N.E.2d 510, requires the Commission review legal and expert fees in accordance with the standard set forth in *Kaiser v. MEPC . . . and Fitzgerald v. Lake Shore Animal Hospital, Inc. . .*¹ (Proposed Order at pp. 2-3, citations omitted).

Since the parties are in general agreement on many issues, MidAmerican is limiting its reply to one issue raised by the Attorney General (AG) and the Citizen’s

¹ AG/CUB BOE at 6, Staff BOE at 2-4, Commonwealth Edison Company BOE at 9-10, North Shore Gas Company and The Peoples Gas Light and Coke Company BOE at 2, 5-7, Nicor Gas Company BOE at 6-7, Ameren Illinois Amended BOE at 2-6,

Utility Board (CUB) regarding required information to determine the reasonableness of outside counsel fees.

II. AG and CUB Exceptions

a. Section .300(b)(2) and (b)(2)(9): Use of Term “Outside” in Connection with Attorney’s Fees and Expert Witness Fees

The AG and CUB take exception to the Proposed Order’s rejection that the salaries of Staff Counsel and the AG should be considered when determining what constitutes a just and reasonable level of compensation for a utility’s Outside Counsel compensation charged as rate case expense. AB/CUB BOE at 17, citing the Proposed Order at 24. The AG and CUB disagree with the Proposed Order’s analysis and argue that the governmental attorney’s litigation utility rate cases should be included with the “market rate” for comparable services. AG/CUB BOE at 18. However, the AG and CUB do not explain how a government attorney could be hired by a utility for representation in a rate case. The AG and CUB seem to confuse participation with the ability to retain employment, and in doing so, neglect to understand that there are no comparable factors that would provide the Commission with “useful guidance.” See *also* Utility Stakeholder Reply Brief at 7-10.

The Proposed Order correctly notes that the AG and CUB did not provide a methodology for the Commission to establish some comparable factors between private and government attorneys. Proposed Order at 24. The AG and CUB find this criticism unfounded, but do not point to where the AG and CUB presented this information in the record. AG/CUB BOE at 18. Instead, the AG and CUB present a new “methodology.” *Id.* Aside from the fact it is improper to introduce new evidence in post-hearing briefs, the “methodology” or “simple mathematical computation” presented by the AG and

CUB, still does not address the fact that governmental attorneys cannot be retained by the private sector and therefore are not part of the “market” used to compare fees.

MidAmerican notes that Staff suggests that the Proposed Order be modified to clarify that the use of information regarding a government attorney/not for profit attorney not be precluded from being presented. Staff BOE at 10. While MidAmerican does not think it is necessary to make Staff’s changes, Staff’s modification highlights that “[t]he Rule should remain flexible, in order to balance the needs of ratepayers to not pay excessive fees and those of utilities and their attorneys/experts, who deserve to be, and are legally required to be, compensated adequately.” Proposed Order at 18. The AG and CUB seem to miss the point that the goal of the rule is to provide guidance as to what evidence is needed to evaluate the reasonableness of rate case expenses. Initiating Order at 1. The Proposed Order’s finding on this issue does not preclude the AG and CUB from presenting evidence on what they may believe will be helpful to the Commission in making its determination regarding rate case expenses in rate cases.

If the rule becomes too prescriptive, then the Rule’s flexibility is eliminated and all parties will not benefit. Therefore, the AG and CUB’s proposed language should be rejected. AG/CUB BOE at 20-21.

III. Conclusion

WHEREFORE, MidAmerican Energy Company respectfully requests the Proposed First Notice Order be revised in accordance with the arguments and revisions outlined in herein, in its previously filed Brief on Exceptions and in the MidAmerican Exceptions.

DATED this 13th day of June, 2013.

Respectfully submitted,

MIDAMERICAN ENERGY COMPANY

By /s/ Jennifer S. Moore
One of its attorneys

Jennifer S. Moore
Senior Attorney
MidAmerican Energy Company
106 East Second Street
P.O. Box 4350
Davenport, Iowa 52808
Telephone: 563-333-8006
Facsimile: 563-333-8021
E-mail: jsmoore@midamerican.com